

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Board on Universal)	CC Docket No. 96-45
Service)	

Reply Comments of the Public Utility Commission of Texas

The Public Utility Commission of Texas (Texas PUC), having regulatory authority over public utilities within our jurisdiction in Texas, respectfully submits these reply comments in response to the *Notice of Proposed Rulemaking (NPRM)* issued by the Federal Communications Commission (FCC) in the above-captioned proceeding.¹ As discussed in the *NPRM*, the FCC is seeking comment on the *Recommended Decision* issued by the Federal-State Joint Board on Universal Service (Joint Board) concerning the process for designating eligible telecommunications carriers (ETCs) and the FCC's rules regarding high-cost universal service support.² The purpose of these comments is not to advocate a position, but to describe how the Texas PUC has historically implemented the ETC designation and annual-certification processes. Nothing herein should be interpreted as support for the federal universal service fund (FUSF) mechanism or the FCC's ETC designation and annual-certification rules as presently configured.

ETC Designation Process

In its *Recommended Decision*, the Joint Board recommended that the FCC adopt permissive guidelines encouraging state commissions to consider additional minimum qualifications when evaluating ETC designation requests, and that the FCC further develop the record on ways in which state commissions may determine whether an applicant satisfied these

¹ *In re Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 04-127 (rel. June 8, 2004) (*NPRM*).

² *In re Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 04J-1 (rel. Feb. 27, 2004) (*Recommended Decision*).

additional minimum qualifications.³ Further, the Joint Board recommended that state commissions apply these permissive federal guidelines to all ETC proceedings, and use a higher level of scrutiny for applicants seeking ETC designation in areas served by rural carriers.⁴

Currently, the Texas PUC processes applications for ETC designation pursuant to its rules, which mirror the FCC's ETC designation rules.⁵ Carriers are required to meet a set of minimum criteria before ETC designation is granted, including: classification as a common carrier pursuant to the Federal Telecommunications Act of 1996 (FTA); offering the supported services either using its own facilities or a combination of its own facilities and the resale of another carrier's services; advertising those services; and providing Lifeline and Link Up support.

Applications are processed administratively by Texas PUC Staff, and public notice occurs in the *Texas Register*, allowing any interested party to file comments or seek to intervene in the docket if desired. For those applications that are uncontested, a final order is issued within sixty days of the receipt of the application.⁶ If an application is contested by Texas PUC Staff or any other party, it is referred to the State Office of Administrative Hearings (SOAH) for an evidentiary review and recommended decision. The Texas PUC then reviews the SOAH decision and either approves it, denies it, or modifies it. Once an ETC designation is approved, either through the administrative or contested process, the Texas PUC sends a letter of advisement to the FCC and the Universal Service Administrative Company (USAC) to enable the carrier to receive support for the designated area(s).

Carriers With ETC Designation in Texas

When the FCC's rules were first adopted, the Texas PUC processed and granted ETC designation to sixty-five Texas incumbent local exchange carriers (ILECs) pursuant to the FCC's new rules.⁷ Since then, the Texas PUC has processed all ETC applications pursuant to the Texas

³ *Id.* at ¶¶ 21-36.

⁴ *Id.* at ¶¶ 17-18, 38.

⁵ P.U.C. Substantive Rule 26.418 (Attachment A).

⁶ See *e.g.*, Docket Nos. 25619, 25425, 25396, 25293, 24386, 24265, 23217, 23177.

⁷ *Filing of Petitions for Designation as Eligible Telecommunications Carrier Pursuant to 47 U.S.C. § 214(e)*, Project No. 18100, Order No. 3 (Dec. 10, 1997).

PUC's ETC designation rule, and has granted designation to sixteen competitive LECs (CLECs) and one commercial mobile radio service (CMRS) provider. To date, a total of eighty-two carriers have been granted ETC designation in Texas.⁸

CMRS ETC Applications

The majority of ETC applications that have been submitted to the Texas PUC in the past few years have consisted of landline carriers seeking to add exchanges to their existing designation. These amendments are, for the most part, processed administratively. However, in the past year, four CMRS providers have submitted ETC applications seeking designation for their mobile wireless services in areas served by both rural and non-rural ILECs.⁹ All of these applications have been contested; four applications are currently being processed at SOAH, and one, Nextel's application, was recently completed by SOAH and ruled on by the Texas PUC.

The Texas PUC denied Nextel's ETC application without prejudice for, in part, failure to meet the requirements of the Commission's rules.¹⁰ For example, the Texas PUC determined that Nextel's maps were insufficient, as they did not allow any party to ascertain whether a customer is located within the proposed ETC designation area,¹¹ and concluded that Nextel failed to show that it would offer to provide the supported services to any consumer in the proposed area, either through use of its own facilities or through resale of another carrier's services.¹² In addition, the Texas PUC determined that, in evaluating whether an application for designation in *rural* ILEC study areas is in the public interest, several factors should be taken into consideration, including additional service offerings, consumer protection and service quality

⁸ Attachment B contains a list of carriers with ETC designation in Texas.

⁹ See *Application of NCPR, Inc. d/b/a Nextel Partners for Eligible Telecommunications Carrier Designation*, Docket No. 27709 (Apr. 28, 2003) (*Nextel*); *Application of Dobson Cellular Services, Inc. for Eligible Telecommunications Carrier (ETC) Designation Pursuant to 47 U.S.C. § 214(e) and P.U.C. SUBST. R. 26.418*, Docket No. 28462 (Aug. 29, 2003) (*Dobson Non-Rural*); *Application of Sprint Corporation for Designation as an Eligible Telecommunications Carrier in the State of Texas*, Docket No. 28495 (Sept. 5, 2003) (*Sprint*); *Application of WWC Texas RSA Limited Partnership, d/b/a CellularOne (Western Wireless) to Amend its Designation as an Eligible Telecommunications Carrier (ETC) in Certain Areas Served by Non-Rural Telephone Companies*, Docket No. 28688 (Oct. 7, 2003) (*Western Wireless II*); *Application of Dobson Cellular Systems, Inc. for Designation as an Eligible Telecommunications Carrier ("ETC") Pursuant to 47 U.S.C. §214(e) and P.U.C. Substantive Rule 26.418*, Docket No. 29144 (Jan. 9, 2004) (*Dobson Rural*).

¹⁰ See *Nextel Order* (Attachment C).

¹¹ *Id.* at 3.

¹² *Id.* at 4-5.

commitments, back-up power capability, and any additional information regarding how consumers would be better served if the company were granted ETC designation.¹³

However, consistent with its first decision granting ETC designation to a CMRS provider, *Western Wireless I*, the Texas PUC determined that designating additional ETCs in *non-rural* ILEC areas is *per se* in the public interest, and that no separate public interest evaluation is required. In *Western Wireless I*, the Texas PUC granted Western Wireless ETC designation for its fixed wireless services provided with a wireless access unit (WAU) in the study areas of fourteen rural ILECs,¹⁴ and determined that the advancement of competition and new technologies in these rural areas was in the public interest. Furthermore, Western Wireless, which also filed for and received designation as an ETP for Texas USF support, agreed to address certain Texas PUC requirements related to the filing of its customer agreements, filing of reports, and quality of service standards that normally apply to competitive LECs.

Annual Certifications

In its *Recommended Decision*, the Joint Board recommended that the FCC encourage states to use the annual certification process for all ETCs to ensure that FUSF support is used to provide the supported services and for associated infrastructure costs.¹⁵

The Texas PUC requires carriers to comply with the federal requirements in 47 U.S.C. §254(e) for receipt of FUSF support.¹⁶ Carriers must provide the Texas PUC with an affidavit annually, on or before September 1st of each year, certifying compliance with the FUSF support regulations. A carrier that fails to file this annual affidavit may be subject to revocation of its FUSF certification. Texas PUC Staff reviews the affidavits and presents a summary of compliant carriers to the Commissioners prior to issuing an annual letter, submitted to the FCC and USAC on or before October 1st of each year, regarding the certification of those carriers for FUSF support. The Texas PUC notes that, if a carrier is granted ETC designation after the

¹³ *Nextel Order* at 9.

¹⁴ *Applications of WWC RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. §214(e) and P.U.C. Subst. R. §26.418 and Designation as an Eligible Telecommunications Provider Pursuant to 47 U.S.C. §214(e) and P.U.C. Subst. R. §26.417*, Docket Nos. 22289 and 22295, Order (Oct. 30, 2000) (*Western Wireless I*) (Attachment D).

¹⁵ *Recommended Decision* at ¶¶ 46-48.

¹⁶ P.U.C. SUBST. R. § 26.418(j).

September 1 deadline, the company must file and the Texas PUC review a separate affidavit in order for that carrier to receive funding, a process that may delay the carrier's receipt of funding.

Conclusion

In closing, the Texas PUC appreciates the opportunity to provide reply comments to the FCC in this proceeding. The Texas PUC believes that it is important to highlight the current activities taking place at the state level, and to urge the FCC to consider the results of state commission proceedings when considering the Joint Board's recommendations for minimum qualifications when evaluating ETC designation requests and the annual FUSF certification process.

Respectfully submitted,

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September 7, 2004

**Julie Parsley
Commissioner**

**Paul Hudson
Chairman**

**Barry T. Smitherman
Commissioner**